

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UMB BANK, NATIONAL ASSOCIATION, AS
TRUSTEE,

Plaintiff,

v.

BLUESTONE COKE, LLC F/K/A ERP COMPLIANT
COKE, LLC, THOMAS M. CLARKE, AND ANA M.
CLARKE,

Defendants.

Case No. 1:20-cv-02043-LJL

UMB BANK’S DAMAGES PROVE UP SUMMARY JUDGMENT MOTION

NOW COMES Plaintiff UMB Bank, National Association, as Trustee (the “*Trustee*”) by and through its attorneys, Chapman and Cutler LLP, and hereby moves this Court to enter a final summary judgment order pursuant to Federal Rule of Civil Procedure 56. In support of its Motion, the Trustee states as follows:

1. The Trustee filed two straightforward breach of contract claims against Defendants Bluestone Coke, LLC f/k/a ERP Compliant Coke, LLC (“*Bluestone*”), Thomas M. Clarke (“*Mr. Clarke*”), and Ana M. Clarke (“*Mrs. Clarke*”) for joint and several liability following default under that certain: (1) Floating Rate Senior Secured Amortizing PIK Toggle Notes due December 31, 2019 in the aggregate principal amount of \$22,500,000 (the “*Notes*”); (2) Floating Rate Senior Secured Amortizing PIK Toggle Notes Indenture, dated as of January 11, 2017 (the “*Indenture*”) in which Bluestone guaranteed the Notes; and (3) Guarantee Agreement (the “*Guarantee Agreement*”) executed by Mr. and Mrs. Clarke in which they too guaranteed the Notes.

2. On November 16, 2020, this Court entered summary judgment against all defendants as to contractual liability under the Notes, Indenture, and Guarantee Agreement. *See*

Opinion and Order [ECF No. 46] (the “*Summary Judgment Order*”). The Summary Judgment Order left the calculation of damages as the sole remaining issue before the Court.

3. By this Motion and the attached Memorandum of Law, the Trustee now submits to the Court that there is no question of material fact concerning damages under the contracts at issue and seeks the entry of a final money judgment jointly and severally against Bluestone, Mr. Clarke, and Mrs. Clarke in the amount of \$12,706,177.10 plus accrued and after accruing fees and costs.

WHEREFORE, the Trustee respectfully requests that the Court grant the Trustee’s Motion and enter a final order of judgment jointly and severally against all defendants in a form substantially similar to the proposed order attached hereto.

Respectfully Submitted,

/s/ Joseph P. Lombardo

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 25, 2021 a copy of the foregoing Damages Prove Up Summary Judgment Motion was filed through the Courts ECF system and will be sent electronically to the registered participants. Interested parties may access this filing through the Court's system.

By s/ Joseph P. Lombardo
Joseph P. Lombardo